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BEFORE THE
DEPARTMENT OF TRANSPORTATION
WASHINGTON, D.C.

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In The Matter of)

Computer Reservations)
System (CRS) Regulations)
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Docket Nos. OST-97-2881 - 171
OST-97-3014 - 40
OST-98-4775 - 85

REPLY COMMENTS OF
AMADEUS GLOBAL TRAVEL DISTRIBUTION, S.A.
IN RESPONSE TO JULY 24, 2000 NOTICE

Of Counsel:

Tomas Lopez Fernebrand
Vice President and General Counsel
Salvador de Madariaga, 1
28027 Madrid
Spain

David H. Coburn
Carol R. Gosain
STEPTOE & JOHNSON LLP
1330 Connecticut Avenue, N.W.
Washington, DC 20036
(202) 429-8063

Attorneys for Amadeus Global Travel
Distribution, S.A.

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IN RESPONSE TO JULY 24, 2000 NOTICE**

Amadeus Global Travel Distribution, S.A. (“Amadeus”) hereby submits these comments in reply to the September 22, 2000 comments submitted by other parties in this proceeding.

The September 22 Comments reflect broad agreement among the majority of commenters on several key issues as follows:

- The Department should continue its regulation of CRSs to ensure non-discrimination in the dissemination of airline fare and related information.
- CRS Rules at 14 CFR Part 255 should be applied evenhandedly to all CRSs, regardless of the extent of airline ownership of the CRS.
- The Department has authority to regulate any CRS under both its Section 411 “unfair and deceptive competitive practices” jurisdiction and its Section 40105 obligation to adhere to international agreements in administering its responsibilities.

- The Department should extend its CRS Rules to the Internet to the extent necessary to protect consumers and ensure fair competition in the distribution of airline services.
- The Department should require that airlines make special fares equally available to all distribution outlets, particularly fares that are made available by an airline to an Internet site with which the airline has a commercial relationship.
- The Department should expand the non-discriminatory participation rules beyond system-owner airlines to airlines that market or have other commercial ties with systems.

In addition, several commenters offered support for reforming the CRS Rules in ways that will spawn additional competition. These reforms include the elimination of the practice whereby dominant airlines tie special fares and other benefits to the use of a favored CRS, the shortening of maximum subscriber contract terms, and a review of the Rules within three years after new rules are adopted.

In these Reply Comments, Amadeus will reiterate its views on these matters and respond to the parties that offer different views on a variety of issues, including Internet regulation, regulation of booking fees and the availability of booking and marketing data.

A. There is Broad Support for Retaining the CRS Rules

Virtually every commenter supported retention of the CRS Rules, with the qualified exception of United, Northwest and Galileo. Indeed, most commenters, like Amadeus, argued that the rules should be extended to apply to *any* CRS, regardless of airline affiliation. As

Amadeus pointed out, however, all CRSs today retain strong affiliations with airlines through ownership, marketing arrangements or other commercial connections.

Not surprisingly, United reiterated its argument that the CRS rules should be eliminated, again focusing on the alleged lack of airline control over any of the CRSs.¹ Similarly, Northwest argued that the CRS rules are unnecessary because no single airline can control a CRS and because of increasing competition from Internet travel sites.² As Amadeus pointed out in its April 26, 2000 Response to Supplemental Reply of United filed in this docket, airline *control* of CRSs has never been the issue or the rationale with respect to CRS regulation; rather, the Department's focus and the underlying justification for the rules has always been the *incentives* created by airline-CRS affiliations. The Department has determined that both parties have the incentive and (absent the rules) the ability to distort competition in the airline services and CRS sectors when an airline owns more than a *de minimis* (i.e., 5% or more) interest in a CRS or when an airline markets a CRS.³ A number of carriers, including United, retain a

¹ See United Comments at 17-22.

² See Northwest Comments at 2-4. Galileo was more lukewarm in supporting elimination of the rules. It stated that the diminished role of airlines in the ownership and operation of CRSs "removes any rationale for most aspects of CRS regulation" but emphasized that its primary concern is evenhanded regulation and that it does not oppose continuation of the rules. See Galileo Comments at 5-7.

³ See 57 Fed. Reg. 43780, 43795 (Sept. 22, 1992) (system owners with more than a *de minimis* interest possess the incentive and the ability to limit competition in competing systems to further the marketing of the affiliated system); *id.* at 43800 (mandatory participation rule is required to prevent system owners from using their hub dominance to obtain dominance in the region's CRS market); *id.* at 43801-02 (rule prohibiting display bias remains necessary to prevent deception of travel agents and consumers and a reduction in airline competition); 62 Fed. Reg. 59784, 59801 (Nov. 5, 1997) (system marketers are excluded from the prohibition on parity clauses because such airlines have the incentive and ability to limit participation in other systems to prejudice CRS competition in favor of the marketed system); 64 Fed. Reg. 16808, 16810 (Mar. 30, 1999) (CRS rules remain necessary to prevent abuses in the systems' competition for travel agency subscribers).

greater than *de minimis* ownership interest in a CRS and/or maintain close commercial ties with a CRS, *e.g.*, through a marketing relationship. Strong commercial and other airline ties with each of the four major CRSs have been well-documented, and these ties demonstrate that the foundation of the rules has not been eroded by reduced airline ownership of CRSs.⁴

Likewise, growing use of the Internet to book airline tickets has not undermined the purpose and operation of the CRS Rules. While the Internet has provided an alternative outlet for the distribution of travel services, it has not reduced travel agents' need for complete, accurate and unbiased information on airline services. Most travel agents continue to rely on a single CRS for such information.⁵ Moreover, because travel agents rely heavily on CRSs, and consumers, in turn, rely on travel agents, the rules are essential to protect smaller carriers from discriminatory fees and/or biased displays that would harm air transportation competition by effectively preventing such carriers from distributing their services.

This situation is unlikely to change any time soon. As a general matter, it is simply too time-consuming -- and commercially hazardous -- for travel agents to attempt to amass unbiased and complete information from the Internet. Doing so would require agents to check numerous sites, and even then they would be uncertain whether the information gleaned is comprehensive and neutral. By contrast, a single CRS entry instantly affords agents the most convenient, unbiased flight information.

There is not only broad consensus in the comments that the CRS Rules should be retained, but the majority of commenters support evenhanded CRS regulation, *i.e.*, regulation

⁴ See, *e.g.*, September 22, 2000 Amadeus Initial Comments at 3-6.

⁵ See 62 Fed. Reg. at 59784 (Nov. 5, 1997).

that does not vary with the degree of links between a CRS and airlines.⁶ CRSs can only compete with one another, and airline competition can best be promoted, if there is an even playing field for all CRSs such that no single CRS would have the option to market display bias to airline customers or engage in other deceptive or unfair practices.

Further, there is also broad agreement in the comments that the Department has adequate authority to regulate any CRS, regardless of the extent of its airline ownership, under both Section 411, and under its Section 40105 obligation to regulate in a manner consistent with the international obligations of the United States to provide a fair and equal opportunity for foreign airlines and CRSs to compete.⁷ Some parties have suggested that the Federal Trade Commission might regulate the activities of any CRS that, at some future point, might lack any airline links. However, the Department's broad authority over CRSs should preempt any other federal agency from regulating in this same area. Indeed, the prospect of such bifurcated jurisdiction would not only overlook the Department's unique expertise and experience in the fulfillment of national aviation policy, but potentially create confusion and inconsistency if some CRSs were subject to regulation by one agency and others by another agency.

⁶ See Alaska Airlines/Horizon Air Comments at 2-5; American Express Comments at 4-5; American Society of Travel Agents Comments at 8; America West Comments at 3-6; Association of Asia Pacific Airlines Comments at 2; Consumers Union Comments at 7-9, 11-12; Continental Supplemental Comments at 3; Delta Comments at 4-6; Galileo Comments at 5-10 (if retained); Lufthansa Comments at 4-5; OAG Comments at 7-8; Orbitz Comments at 74-76; Qantas Comments at 2-5; Sabre Comments at 16-17; Worldspan Comments at 4-6.

⁷ See Alaska Airlines/Horizon Air Comments at 5-5 (Section 411); American Airlines Comments at 29-30 (Section 411 and international obligations); Consumers Union Comments at 7-9 (Section 411); Continental Supplemental Comments at 7-8 (Section 411); Lufthansa Comments at 5-7 (Section 411 and international obligations); Orbitz Comments at 75 n.18 (international obligations); Qantas Comments at 4 (Section 411); Sabre Comments at 14 (Section 411); Worldspan at 6 (Section 411).

B. There is Broad Support for the Extension of the CRS Rules to Internet-Based Distributors of Integrated Air Transportation Information

The Department regulates CRSs so that travel agencies will have access to complete and unbiased airline schedule, fare and related information that they can use when booking travel for consumers. Consumers are of course the ultimate, and the intended, beneficiaries of the unbiased displays required by the CRS Rules.

In an era of growing reliance by consumers on making their own travel plans through Internet-based sites that display flight information for multiple airlines (and thus serve as the functional equivalent of a CRS), the Department can no longer achieve the consumer-protection goals of its CRS Rules unless it requires that on-line travel services comply with the core elements of those rules. From a policy perspective, it makes little sense to maintain CRS rules designed to eliminate bias in displays made available to travel agencies -- which are staffed by professionals equipped to discern any such bias and protect their clients -- while simultaneously offering no protection against bias for displays that are seen directly by consumers, who are ill-equipped to discern such bias.

Moreover, the line between “traditional” CRSs and on-line travel services that are functional CRSs is often blurred. For example, GetThere.com, a website recently purchased by Sabre (and thus presumably marketed by American Airlines), provides, *inter alia*, corporate and other travel services. In doing so, it offers direct connections for its customers to the internal reservations systems of particular airlines. *See* articles concerning GetThere, attached hereto as Exhibit 1. To that extent, GetThere operates in a manner that is not essentially different than Amadeus, Sabre or any other “business to business” oriented CRS -- it facilitates the ability of its customers to access fare and related data supplied by airlines and to make bookings through its

system. If sites such as GetThere are not already subject to the CRS Rules, there is no viable policy reason why they should not be.

The majority of commenters agree with Amadeus that on-line travel distribution providers should be regulated to the extent that they display information for multiple airlines (excluding individual carrier websites as to which there is no expectation of neutrality). Such websites should be subject at least to (1) an anti-display bias obligation such as that set forth in section 255.4 of the Rules currently applicable to CRSs and (2) an obligation on the part of airlines, particularly those that own, market or have other commercial arrangements with an Internet site, to provide the same fare, schedule and related data to any other website and distribution channel that they provide to a site in which they participate or have any commercial arrangements, i.e., an obligation parallel to the non-discriminatory CRS participation rule found at section 255.7.

Regulation to ensure unbiased integrated flight displays on the Internet and equal access to fares through any on-line or other distribution channel is advocated by CRSs, by certain airlines, by consumer groups and, indeed, by major on-line travel agencies that would be subject to these requirements, Travelocity and (with some qualification) Expedia. At the same time, Orbitz, the five major airlines that own that website -- some of which have switched their views on this issue since Orbitz was announced -- and a small number of other parties oppose any regulation, including anti-display bias regulation, of integrated flight display websites used by consumers.⁸ These parties assert that (1) regulation will stifle the Internet as an innovative,

⁸ Not all of the current opponents of regulation of on-line agencies can be accused of consistency. In its 1997 Comments in this proceeding, American Airlines stated as follows:

Before the Rules were enacted, carriers could, by owning a CRS, cause it to bias displays. Today, carriers can "buy" preferential display in

(Continued ...)

lower-cost mechanism for airline bookings; (2) there is no indication of any abuses warranting regulation; (3) consumers can jump from one site to another, thereby eliminating the need for regulation; (4) regulation would be inconsistent with Clinton Administration policies and (5) the Department lacks jurisdiction to regulate Internet sites. None of these arguments withstands scrutiny, as shown next.

1. Regulation of On-Line Agencies Will Not Stifle Innovation or Competition, or Disable Carriers from Offering Discounted Fares

The parties that claim that anti-bias regulation will stifle the growth of the Internet as an innovative and lower cost alternative to CRS-based bookings offer no proof that their prediction is well founded. No party is proposing to subject these on-line businesses to costly or potentially stifling public-utility style regulation. The costs associated with more modest CRS

on-line travel sites. This leads to two problems. First, unless the Rules are updated to cover on-line commerce, there will be a repeat of the early 1980's, except the potential for harm is worse. At least in the 1980's, the direct users of biased displays were trained travel agents that worked with CRS displays all day long, knew of the bias in the displays, and knew to check whether other options were available. Few direct consumers are likely to spend 40 hours per week looking at on-line travel displays, and many are unlikely to have the time or experience that travel agents have to counter the effects of a biased display. Second, continuing the Rules without updating them will cause some providers of travel information to be shackled by regulation, but will allow others to compete unfettered.

Accordingly, the Department should reevaluate the jurisdictional basis for the Rules, and update them to apply to all providers of purportedly neutral fare and schedule information, regardless of whether the information is provided by screen displays to travel agents, by computer display to a prospective traveler, or by some other means.

American Airlines Comments, December 9, 1997 at 11. *See also* Continental 1997 Comments at 20-22 (CRS Rules should cover all on-line travel information services; Northwest 1997 Comments at 11-12 (all distribution channels that purport to be neutral should be regulated under the CRS Rules).

regulation designed to prevent bias are marginal at best. For the website, these are the “costs” associated with ordering displays (*i.e.*, ranking flights) in the manner that adheres to the same parameters that CRSs must follow under the current Rules. For the carrier that has a commercial relationship with the website, regulation would result in only the marginal costs of providing the same data to all distribution channels. It is counter-intuitive to assert that the relatively small costs associated with this type of anti-discrimination regulation would somehow stifle the development of the Internet as a distribution tool or outweigh the consumer benefits of such regulation.

Nor is there any credibility to the claim of Orbitz and its owner airlines that airlines might have to forego offering discounted “e-fares” if such fares had to be made available to CRSs and other sites because such discounted fares could not be sustained due to the higher distribution costs that might be associated with CRSs or other distribution channels. It is not at all clear that the cost of CRS distribution is higher or meaningfully higher than the cost to airlines associated with their participation in Orbitz or like Internet-based travel sites. First, such websites generally impose participation and/or transaction fees on participating carriers. Second, there are also booking fulfillment costs imposed on website transactions. Third, carriers often bear marketing, technology and other costs associated with the operation of websites that sell the services of multiple airlines. Marketing costs are, in fact, a substantial and essential element of Internet distribution -- a travel website will only succeed if consumers and other customers can be persuaded to use it. By contrast, a traditional CRS has a base of customers that are already in place and does not impose marketing charges, other than to the extent the costs of marketing are built into the booking fees.

In the case of Orbitz, it is reported that its airline owners apparently will fund a \$100,000,000 marketing program announced by that entity. Further, airlines participating in that website are required to provide “in-kind promotions” (direct mailings and other advertising promotions) for the benefit of Orbitz. *See* Orbitz Agreement, section 2.2. These promotions will presumably carry a considerable price tag. As noted, the costs associated with such marketing and promotional programs -- which airlines are not asked to bear in connection with their CRS participation -- must be factored into any comparison of CRS booking costs versus the costs of booking on a site such as Orbitz. For payment of the booking fees imposed by a CRS, the airline receives access to thousands of travel agencies; for participating in Orbitz, its airline owners will need to bear the cost of persuading customers to use its website.⁹ Of course, Travelocity and Expedia must also recover their marketing costs from some source, which presumably includes the airlines that participate in those sites.

Orbitz and its allies also suggest that the Rules have protected CRSs from competition, resulting in excessive CRS booking fees.¹⁰ This assertion has no merit; it appears designed only to allow Orbitz to claim the high road of competitive reform. The reality is that booking fees increases in recent years have been modest. In the U.S., Amadeus took a 3.4% booking fee increase in 1996, no increase at all in 1997, 2% in 1998, 5.3% in 1999 and 5% in 2000. These increases, all justified by increasing communications, technology and other costs,

⁹ Any comparison of the costs of booking on an Internet site such as Orbitz versus CRS booking are, to some extent, an apples/oranges situation: CRSs are business-to-business entities, while the websites at issue here are primarily business-to-consumer entities that work on a different economic model. The point here, however, is that website distribution costs are not *de minimis* and not far different from CRS costs.

¹⁰ Orbitz claims that booking fees have increased 1400% since 1983, while computing fees have gone down 99% during that period. Orbitz Comments at 33. It offers no citations or other support for these claims.

are well in line with (and indeed somewhat lower than) similar increases taken by competing CRSs in recent years. Air fares have increased at a somewhat faster rate during portions of this period. For example, in 1997, a year in which Amadeus did not increase its fees, unrestricted U.S. domestic coach seats increased by 17%, according to an American Express survey of fares.¹¹ According to AAA surveys, in recent months air fares are significantly higher than they were during the same periods one year ago, *e.g.*, roundtrip leisure fares in June 2000 were 20 percent higher than in June 1999.¹²

Not only have CRS fees gone up much more slowly, but the percentage that CRS booking fees represent relative to an average air fares is, as Sabre correctly reports in its Comments, still only approximately 1.5% -- a modest amount by any measure. In sum, the contention that CRS fees are an exorbitant and fast increasing cost to airlines, or that regulation of CRSs has resulted in higher distribution costs, is simply false.

Moreover, Amadeus offers various booking fee options to carriers, specifically transaction-based and net fee options, in order to allow them to pay booking fees that are as low as possible. Effective January 2000, Amadeus now offers channel pricing to all of its U.S. participating carriers. This pricing option applies to all "airline own" bookings originating from a direct distribution channel owned and managed by the airline.

There is also no innovation "cost" associated with CRS-type regulation, as Orbitz and its allies contend. Internet sites could continue, as traditional CRSs do, to develop and apply new technologies and to pursue any new marketing approaches that they might find attractive.

¹¹ See American Express Domestic Airfare Index, reported in *Kiplinger's Personal Finance Magazine*, "Airfares Just Keep on Skyrocketing," January 1998.

¹² See AAA Travel News at <http://www.aaa.com/news12/Releases/Travel/ltijune1.htm>

Indeed, the notion that CRS regulation has somehow stifled technological innovation is without any foundation. For example, in recent years, Amadeus has launched a series of new services, certain of which are supported by a redesign of its central system architecture. These include e-ticketing and a related e-ticketing server that allows for related functions; the “Value Pricer” feature that is considered the best low fare search product in the industry; and the Customer Server concept, which allows for greater flexibility in terms of accessing customer information from a separate database. Amadeus has also launched a new generation of front office packages based on Internet technology, such as Amadeus Vista, that are designed to significantly increase productivity. In addition, Amadeus continues to develop technology that enhances the ability of travel agencies and other users to utilize the Amadeus booking engine in conjunction with their own applications. These and a variety of other technological improvements underscore the dynamic nature of the CRS business, as well as the fact that CRSs must innovate technologically in order to remain competitive. CRSs are simply not the old fashioned dinosaurs that Orbitz suggests is the case.

Orbitz’s claim that the CRS Rules should not be extended to on-line services because the Rules have largely failed to achieve their goals also does not stand up. Certainly, in some respects the Rules need reform in order to more fully achieve their goals, *e.g.*, the maximum terms of subscriber contracts should be shortened, marketing carriers should be subject to the same anti-bias rules as are system-owning carriers and airlines should be prohibited from using their market clout to force agencies or corporations to use a favored CRS system. But the core purpose of the Rules to eliminate display bias has been largely met, and virtually all of the commenters agree on that point. Further, even while proclaiming the Rules a failure in certain respects, Orbitz supports strengthening the CRS Rules.

2. The Current Reality of On-Line Agency Bias Warrants a Regulatory Response

The argument has been made by those opposed to the extension of CRS-type regulation to the Internet travel distribution sites that there is no evidence of bias in those sites and therefore no basis on which a regulatory response is warranted. This argument is misplaced both on the facts and from a policy perspective.

There is, in fact, evidence that leading on-line booking sites -- which control the vast majority of such bookings -- may be biasing the flight displays on which unwitting consumers rely in making travel decisions. The comments of the Consumers Union are particularly instructive in this regard. A study of four major Internet sites (Travelocity, Expedia, Cheap Tickets, and Lowestfare) undertaken by that entity and reported in an October 2000 *Consumer Reports Travel Letter* article attached to the Consumers Union comments concluded that "none of the four web sites consistently offered complete and fair listings of all viable flights in our tests, particularly when we compared the results with the Apollo Galileo benchmark."¹³ Among the key findings of the study were the following:

- "[T]he featured airline on Travelocity was listed first 48 percent of the time and dominated other listings."
- "Lowestfare's contract agreement with TWA seems to have influenced its flight listings . . . that airline was listed as the first choice 50 percent of the time (in 27 of 54 tests) when no other site listed TWA more than 23 percent of the time."

¹³ Consumer Reports Travel Letter at 7-8 (Oct. 2000).

- “Spirit Airlines was missing from Expedia; Vanguard was absent from Expedia and Lowestfare; and Southwest appeared only in Travelocity, even though Cheap Tickets and Lowestfare receive data from Sabre, which includes Southwest.”
- “One key airline executive says web site marketing initiatives include preferential listing of flights.”¹⁴

It is of course airline competition, and consumer travel options, that suffer as a consequence of such bias, no less than competition and consumer options might suffer were the CRS rules not in place. The comments of smaller airlines such as Midwest Express, Alaska Air/Horizon Air and America West drive home this point. Each of these carriers supports measured regulation of Internet web sites because these smaller carriers recognize that it is they who will competitively suffer, or are already suffering, as a consequence of bias on Internet sites.¹⁵ The Midwest Express comments are particularly instructive in this regard, offering further specific examples of how that carrier’s flights are prejudiced on the Expedia displays versus the unbiased displays of traditional CRSs, apparently because of arrangements that Expedia has made with other carriers to offer them preferential listings. Midwest Express at 11-13 and Exhibits 4-6.

Further evidence of bias was reported in an October 11, 2000 Aviation Daily article, entitled “Northwest Withdraws from Lowestfare.com in Display Bias Dispute.” The article, a copy of which is attached as Exhibit 2, reports that Northwest, which had earlier

¹⁴ *Id.* at 8-9.

¹⁵ Midwest Express at 6-21; Alaska Airlines/Horizon Air at 6-10; America West at 8-10.

complained of Travelocity bias, is withdrawing from Lowestfare due to display bias, and the competitive disadvantage it thereby suffers, resulting from arrangements between that Internet site and other carriers.

As the comments of numerous parties emphasize, the likelihood of bias is substantial with respect to Orbitz. We will not endeavor here to review all that has been said about Orbitz in the opening comments and elsewhere. It is clear, however, that Orbitz and its planned preferential and exclusionary arrangements pose a threat of display bias, and consequent distortion of competition, that is both substantial and unparalleled. For example, among the “in-kind promotions” that Orbitz will require from its participating carriers is “making fares exclusively available on Orbitz.”

The notion that the Department should wait to confirm that such bias develops before taking regulatory action should be rejected. Such a “wait now, act later” approach was firmly rejected by Inspector General Mead in his Senate testimony on Orbitz: “[H]istory has shown how very, very difficult it is to fix problems in this area after they occur. So we have an opportunity here to be proactive [referring to regulation of Orbitz], and I hope we are.” That approach is also inconsistent with the Department’s more general view that its authority under Section 411 to address unfair, deceptive and anti-competitive practices can be exercised in settings in which the practices at issue have may not yet come to fruition, but are reasonably anticipated.¹⁶

¹⁶ See 57 Fed. Reg. at 43790 (“Under section 411, that kind of *threat* to competition is sufficient to authorize our adoption of these rules . . . Under section 411 we need not find that any vendor’s conduct would be a violation of the antitrust laws under the essential facilities
(Continued ...)

3. Consumers Cannot Readily Avoid the Influence of Bias

It is argued that consumers need only switch to a different site to avoid the influences of bias on Internet sites, thus mitigating any harm that would otherwise result from the bias. This argument constitutes wishful thinking more than anything else. While Amadeus does not disagree that consumers have the capacity to switch from one site to another, it is doubtful that they do so as a matter of course. A major attraction of sites such as Travelocity and Expedia is that they offer one-stop-shopping opportunities and thus it is counterintuitive to believe that consumers compare the results of several sites as a matter of routine.

Further, consumers are ill-equipped to detect bias. If consumers have no reason to suspect that the results produced by one site might be different than those produced by another, then they have no reason to “shop around” the Internet. Certainly, the operators of on-line agencies would not encourage such activity -- these sites spend large sums of money to attract customers and promote loyalty. And if all of the major sites are biased to one extent or another, as the Consumers Union comments demonstrate, then consumer clicking to find a new site would not solve the bias problem anyway.

The major theme of the Orbitz comments is that competition among websites will cure any problems that might arise, *i.e.*, that consumers will be attracted to unbiased sites and thereby put competitive pressure on other sites to eliminate bias. Virtually all of its lengthy comments rest on this proposition. However, as Orbitz demonstrates in the testimony attached to its own comments, only a small handful of sites attract the vast majority of Internet travel sales. *See* Statement of Daniel M. Kasper, attached to Orbitz Comments, at 17 (four web sites --

doctrine. We may adopt CRS rules if we find that the vendors' past or potential conduct would resemble the kind of conduct proscribed by the doctrine.”)

Travelocity, Expedia, Priceline and Cheap Tickets -- control 77% of Internet bookings). Indeed, Orbitz has described the powerful hold that the “duopoly” of two on-line agencies, Travelocity and Expedia, have achieved in respect to on-line bookings. *See* Orbitz Comments at 25-27 and Exhibit A (claiming that these two agencies account for 70% of all sales of tickets by on-line agencies and that they are the exclusive agencies on Internet portals used by 90% of all Internet users.)

Thus, while there may in fact be dozens of sites for airline bookings available to consumers, the reality is that only a small handful of these sites has achieved any meaningful degree of market penetration. Given the continuing shakeout in the Internet business world, and the strong financial backing needed to achieve market share, it is debatable that this situation will change any time soon -- other than to the extent that Orbitz is able to leverage its airline ownership links to wrest market share from the few other sites that are dominant today, turning a duopoly into a “tripoly.” In this relatively concentrated market for on-line bookings, the notion that free market forces will resolve the issue of display bias is fanciful. Indeed, the notion becomes virtually absurd when one considers that Orbitz, which bills itself as the site that will bring new competition to on-line booking sites, is itself a joint venture formed by the relatively small group of airlines whose bookings collectively account for the vast bulk of U.S. carrier bookings. Orbitz’s contention that its entry into the market will serve, like some white knight, to clean up the existing bias in on-line ticket sales by injecting a new element of competition into the mix must be viewed with a large grain of salt. The reality is that Orbitz’s first and foremost mission will be to serve the interests of its carrier-owners, and it is simply asking too much for the Department or anyone else to believe otherwise.

4. Measured Regulation of On-Line Agencies Would Be Consistent with Administration Policy

Several parties who oppose a rule prohibiting biased displays on Internet sites that display the fares of numerous carriers rely on a 1997 statement of the Clinton Administration entitled “A Framework for Global Electronic Commerce.” In that policy statement, the Administration expresses general support for the proposition that the federal government should not play an intrusive role in Internet commerce. What these parties fail to emphasize, however, is the following language in the policy statement that supports appropriate, limited regulation to protect consumers from abuses:

Where governmental involvement is needed, its aim should be to support and enforce a predictable, minimalist, consistent and simple legal environment for commerce. In some areas, government agreements may prove necessary to facilitate electronic commerce and protect consumers. In these cases, governments should establish a predictable and simple legal environment based on a decentralized, contractual model of law rather than one based on top-down regulation. . . . Where government intervention is necessary to facilitate electronic commerce, its goal should be to ensure competition, protect intellectual property and privacy, prevent fraud, foster transparency, support commercial transactions, and facilitate dispute resolution.¹⁷

The policy statement’s recognition that regulation is appropriate to “protect consumers” fits precisely the situation here. The Department has already determined that regulation of CRS displays viewed by travel agencies is in the public interest; it is hardly a great leap to conclude that CRS-type displays viewed by consumers should also be minimally regulated to ensure their fairness and to avoid misleading consumers.¹⁸ Several of the airlines

¹⁷ See Clinton Administration Framework for Global Electronic Commerce, <http://www.whitehouse.gov/WH/New/Commerce>.

¹⁸ Limited regulation of Internet sites to protect consumers is nothing new and there is precedent to support it. The FTC, for example, regulates false advertising on the Internet. See
(Continued ...)

(American, Continental and Northwest) that now oppose the regulation of on-line agencies reached precisely this conclusion in the prior round of comments.

5. The Department's Authority to Regulate Internet Sites is Beyond Question

The Department's authority to regulate sites that provide air travel information to the public and that sell air travel is solidly based on Section 411, which provides the Department with jurisdiction to eliminate unfair and deceptive practices of "ticket agents" -- a category of entities that embraces Internet-based agencies. When coupled with the Department's broad rulemaking authority, there can be no serious doubt that rules to address the abuses already evident in Internet sales are well within the scope of the Department's authority.

* * *

Orbitz and its owner airlines should have nothing to fear from limited anti-discrimination regulation. It is telling that neither Travelocity nor Expedia agree with Orbitz or its owners that the limited extension of the CRS Rules to on-line agencies would stifle their business opportunities or the development of new technologies. Travelocity (and Sabre) support rules that would extend to such agencies the anti-bias provisions of section 255.4 and the mandatory participation requirements of "system owners" embedded in section 255.7, as well as rules that would prohibit airlines from using jointly-owned agencies to discourage competition.¹⁹ Expedia favors the extension of the CRS Rules to airline-owned agencies that offer integrated travel services, particularly the mandatory participation and non-discrimination rules.²⁰ It also

also, e.g., Electronic Signatures in Global and National Commerce Act, 15 U.S.C. § 7001, et seq. (addressing issues relating to electronic contracts).

¹⁹ Travelocity Comments at 17-21; Sabre Comments at 15-16.

²⁰ Expedia Comments at 7-13.

urges the Department to extend the provisions of section 255.6(e) to prohibit “most-favored-nation” clauses in airline-owned sites. Sabre, which owns or is affiliated with various Internet-based sites, also favors extension of the anti-bias and non-discrimination CRS Rules to such on-line agencies, including the mandatory participation rules.²¹

Amadeus agrees with these parties that extension of these rules to on-line agencies will resolve problems of discrimination and not dampen competition or innovation. Orbitz’s arguments to the contrary must be viewed through the prism of its airline ownership; Orbitz’s owners apparently want the right to withhold fare and other information to the disadvantage of other distribution channels. As several parties note, both the EU and Canada have extended certain regulations to Internet sites, thereby protecting consumers in those countries from display bias. There is no reason why U.S. consumers should not be entitled to the same protections, and for that reason alone the Department should move forward in this area.

Finally, in its October 20, 2000 order in Docket OST-97-2061, *Petition for Rulemaking and Third Party Complaint of Donald L. Pevsner, Esq.*,²² the Department held that airline reservations personnel (but not travel agents) are required by section 41712 to advise passengers of the possible availability of lower Internet fares, but declined to rule that such fares must be quoted or otherwise made available through other distribution channels. Amadeus urges the Department to take the next logical step in this proceeding by requiring that Internet fares be made available for sale through other distribution channels. The Department’s order assumes that “access to the Internet is now available to virtually anyone” and that it would necessarily increase airline costs to make fares available through other channels. Neither proposition is

²¹ Sabre Comments at 15-16.

²² Order 2000-10-23.

well-founded. The cost issue has already been addressed; it is not at all established that Internet costs are lower than the costs of other distribution channels. As noted, CRS costs remain no more than about 1.5% of the cost of an average airfare.

With respect to Internet access, a recent Department of Commerce study indicates that, while computer access is increasing, only 51 percent of American households now have computers and only 41.5 percent of households have Internet access. This same report also found a continuing disparity between whites, blacks and Hispanics in terms of Internet access; only approximately 23% of black and Hispanic households have access to the Internet, compared to a much higher (but still less than majority) percentage for white households of 46.1%.²³ Disabled persons also have much lower rates of access to the Internet than do other persons, according to the report. In short, there is still far less than universal access to the Internet, and thus to the Internet-only fares that airlines now offer.

C. The Mandatory Participation Rule Should be Strengthened

While many commenters agreed with Amadeus that the mandatory participation rule should not only be retained but also extended to require system marketers as well as owners to provide complete and timely information to all systems, several (including Orbitz and its owners) advocated the rule's elimination.²⁴ Significantly, no commenter which favored retention of the rule opposed broadening its scope to encompass system marketers. Many commenters,

²³ See Falling Through the Net: Toward Digital Inclusion, at <http://osecnt13.osec.doc.gov/public.nsf/docs/fttn-tdi-executive-summary>. See also *Computers in Half of U.S. Homes*, Washington Post, October 17, 2000, attached as Exhibit 3.

²⁴ See American Supplemental Comments at 23-24; Delta Supplemental Comments at 15-16; Orbitz Comments at 80-81; United Comments at 21-22. Delta supported extension of the mandatory participation rule to system marketers if the rule is maintained. Northwest, which argued generally for abolition of *all* of the rules, likewise stated that the mandatory participation rule should be extended to system marketers if it is retained. See Northwest Comments at 2-4.

like Amadeus, recognized that the coverage of the rule should be expanded because system marketers have the same incentives to promote discriminatory conduct as system owners.²⁵

The Department has found that the mandatory participation rule is essential to prevent system-affiliated airlines from using their hub dominance to distort competition in the airline services and CRS markets.²⁶ Nothing has changed to undermine that conclusion. System owners (and marketers) still have both the incentive and the ability to limit participation in competing systems to favor their affiliated system. In recent weeks, Amadeus has received numerous reports from agencies in areas in which American Airlines is a dominant carrier that that airline is aggressively exploiting its position by denying to agencies that do not use Sabre the same degree of access to discounted American fares, *e.g.*, non-Sabre agents are told that they must telephone American to receive access to fares that can be accessed through the Sabre system. The fact that American and other system marketing airlines can use their market power in an effort to distort CRS competition in favor of their marketed CRS -- in clear violation of the policies underlying the system owner rules -- is a matter that warrants immediate attention by the Department.

Nonetheless, opponents of the mandatory participation rule argue that the rule should be abolished because it stifles innovation and improvements, while increasing CRS fees

²⁵ See ASTA Comments at 7; America West Comments at 3; Continental Comments at 6; Delta Comments at 15 (if rules are retained); Galileo Comments at 9-10 & n.10; Northwest Comments at 4-5 (if rules are retained); Worldspan Comments at 11; USTAR Comments at 3. The Department acknowledged in the parity clause proceeding that system marketers have the same incentive as system owners to downgrade participation in competing systems to force travel agencies in the marketer's hub areas to use the marketer's affiliated system. See 62 Fed. Reg. at 59788.

²⁶ See 57 Fed. Reg. at 43800.

by reducing competition between CRSs. These claims overlook the fact that the number of airlines that are system owners is very small compared to the total number of airlines that participate in CRSs.²⁷ CRSs have every incentive to compete vigorously to ensure that they do not lose the business of the substantial number of airlines that are not required to participate in their systems and to induce such airlines to participate at a high level. Such vigorous competition embraces both price competition and system upgrades and is unaffected by the mandatory participation rule. Since CRSs cannot price discriminate, they cannot charge system owners a higher fee for participation, but must charge such airlines the same competitive rates they offer non-system owners. In other words, CRSs are constrained from raising fees above a market level by the risk that they will lose (or fail to attract) the business of participating airlines which are not system owners.

In any event, the rule's opponents ignore the fact that system owners need not participate in other systems if the terms of such participation are not commercially reasonable.²⁸ This limitation also restrains the level of booking fees. Indeed, Amadeus can find no instance where a system owner has complained to the Department that a system's terms are not commercially reasonable.

Finally, on-line agencies, and the success of many airline-operated websites, provide another source of competition for CRSs and serve to inject additional market forces with

²⁷ See 57 Fed. Reg. at 43800 ("few" carriers are subject to the mandatory participation rule).

²⁸ See 14 C.F.R. § 255.7(a). The Department has interpreted the term "commercially reasonable" broadly and flexibly to include, for example, considerations related to price, anticipated benefits from a particular enhancement or feature, level of investment in software or communications by the system owner, and any flaws in the feature. Thus, a system owner can show that participation is commercially unreasonable for a reason other than price.

respect to booking fee levels. Applying anti-discrimination regulation to multi-carrier on-line agencies, as discussed above, will not dampen this competitive influence.

D. The Department Should Decline to Regulate Booking Fee Levels or Other CRS Pricing Initiatives

Several parties have raised issues respecting the level of booking fees, as well as other CRS pricing initiatives -- channel pricing in airline arrangements and productivity pricing in agreements with subscribers. We will address these concerns here.

1. The Department Should Not Regulate Booking Fees

As it has done in the past, the Department should decline to regulate the level of CRS booking fees. Once again, America West stands as virtually the lone proponent of regulated booking fees in this proceeding.²⁹ America West argues that the Department should either tie booking fee increases to increases in the Consumer Price Index (CPI) or impose a “reasonableness” requirement on fees.

Amadeus respectfully submits that, beyond requiring fees to be non-discriminatory, as section 255.6(a) of the rules currently does, regulation of booking fees is unnecessary and unworkable. As discussed above, competition between systems and from Internet-based travel sites constrains booking fees. Further, the Department’s rule against parity clauses, section 255.6(e), ensures that participating carriers are able to choose their level of CRS participation and thereby augments competition between CRSs and restrains fee increases.

²⁹ See America West Comments at 11-13. Midwest Express advocates such regulation only if systems cannot show that fees are reasonably related to costs. See Midwest Express Comments at 21-23. The Association of Asia Pacific Airlines recommends that independent third parties conduct studies on CRS pricing and that the Department use such studies to review CRS fees and practices, but appears to be suggesting something short of full-scale regulation of

(Continued ...)

Similarly, the Department's rule allowing agencies to use third-party hardware and software and to access several systems and databases from non-CRS-owned terminals, 14 C.F.R. § 255.9, promotes CRS competition and restrains fees. And Amadeus supports further reforms -- such as shorter maximum terms for subscriber agreements and the full elimination of tying of airline fares and commissions to CRS use -- that will further spur competition.

Regulation of booking fees would embroil the Department in time-consuming and costly proceedings similar to those historically undertaken in the context of public utilities (which, for the most part, have accomplished or moved toward deregulation). America West's oversimplified formula for regulation, *i.e.*, limiting fee increases to one-half of the increase in the CPI, does not consider costs incurred by the CRSs and therefore cannot serve as an acceptable formula for setting fees. America West also suggests that a system could justify fee increases in excess of one-half of the increase in the CPI by showing that such increases are supported by cost increases beyond the system's control. However, this recommendation, along with America West's alternative suggestion that the Department adopt a "reasonableness" test for booking fees, would produce public utility-type regulatory proceedings, impose enormous costs on CRSs as well as on the Department and result in higher booking fees. The Department has already acknowledged that ratemaking proceedings create inefficiencies which are likely to produce higher rates for airlines and consumers.³⁰ Further, the Department recognized long ago that the CRS industry is even less conducive to reasonable rate requirements than public utility

booking fees. *See* AAPA Comments at 4. These arguments should be rejected for the same reasons expressed here.

³⁰ *See* 57 Fed. Reg. at 43816-17; 56 Fed. Reg. at 12617.

industries.³¹ The Department explained that allocating costs between a CRS's three sets of users (the host carrier, participating carriers, and travel agency subscribers) would be extremely difficult if not impossible, the economies of scale in the industry would create anomalies because smaller systems would either be able to charge higher fees than larger ones or would be unable to recoup their costs if fees were held to an absolute level, and rapid technological changes would make rate-setting complex and burdensome.³²

American has suggested in this proceeding that booking fees be shown separately on airline tickets as a means to induce travel agencies to shift away from CRSs that it claims charge "supra-competitive fees." American Comments at 24. As American notes, the Department of Justice made this recommendation in 1991 in response to the ANPRM issued in the 1992 CRS rulemaking proceeding. However, the DOT voiced serious objections to it and Justice dropped its proposal by the time it responded to the 1992 NPRM. As the DOT concluded and Justice acknowledged, the amount of the booking fee relative to the cost of the ticket would probably be too small to cause most consumers to shop for an agency using the lowest-priced CRS.³³ In any event, the Department found the proposal problematic in part because it might not have any effect on booking fees since agencies could offset the fees by splitting their commissions with customers or providing additional services.³⁴ The intense competition between the major CRSs makes the proposal even more problematic today -- that competition protects agencies and consumers from excessive booking fees.

³¹ 57 Fed. Reg. at 43817.

³² *Id.*

³³ *See* 56 Fed. Reg. at 12618.

³⁴ *Id.*

Moreover, requiring booking fees to appear separately on tickets could cause consumer confusion since consumers are unlikely to understand the variances between CRS charges given different types of booking fee options available to airlines. Such a requirement would also be administratively burdensome and expensive, because CRSs would have to reprogram their systems to make the booking fees print separately and new ticket stock would likely need to be designed and purchased.

2. The Department Should Not Preclude Channel Pricing

America West asks the Department to ban what it calls “channel preference pricing arrangements,” *i.e.*, arrangements in which a CRS charges an airline “reduced booking fees for bookings made through the CRS’s corporate booking tool (*e.g.*, Sabre’s Business Travel Solutions) in exchange for the airline promoting their products to corporations.”³⁵ The Department should decline America West’s invitation to create such a rule.

In essence, America West is asking the Department to prohibit airline marketing of CRS services. However, as long as airline-marketed systems are subject to the CRS rules, as they are now, there is no reason for such a rule. America West offers three points in defense of its proposal, none of which is persuasive. First, America West argues that such an arrangement forces the carrier to promote a product that directs bookings away from direct reservations with the carrier. This may be true in the case of some CRS arrangements, but the carrier need not agree to promote the CRS’s product in the first place. Obviously, each carrier knows that it can choose to promote only direct bookings with itself and will decide whether or not to do that based on its own self-interest. Second, America West claims that such arrangements are bad

³⁵ See America West Comments at 13-14.

because the benefit of the discount is vastly greater for major carriers with multiple corporate programs. This also may be true, but the benefit is not “vastly greater” from a relative standpoint; those carriers also pay much higher booking fees, in gross, than smaller carriers. Third and finally, America West opposes such arrangements because, it asserts, CRSs counterbalance any forfeited revenue by increasing standard booking fees for leisure and other travel. However, this is not necessarily the case, and America West offers no evidence to support this assertion. In fact, it is at least as likely that the increased volume of bookings experienced by a CRS as a result of this marketing technique will more than offset any marketing fees paid to the airlines. Accordingly, CRSs will have no need to “counterbalance” those marketing fees. In short, these marketing arrangements simply do not require or justify Department regulation of CRS pricing.

3. The Department Should Continue to Permit Productivity Pricing

Delta and Orbitz argue that productivity pricing arrangements offered by CRSs (agency incentives based on the number of bookings) impose severe penalties on agencies that seek to switch from one CRS to another. Delta seeks a broad prohibition on such pricing plans; Orbitz argues that such pricing should be allowed only to the extent that it reflects actual cost savings.³⁶

If the Department places limits on cancellation penalties that can be imposed on agencies, any concerns -- and Amadeus does not credit these concerns as well-founded -- that have been raised about cancellation penalties tied to productivity pricing clauses should be mooted. Beyond that point, however, Amadeus submits that the Department should not interfere

³⁶ Delta Supplemental Comments at 10; Orbitz Comments at 77-78.

with pricing plans that the free market has effectively endorsed. Unlike minimum use clauses, productivity pricing plans do not constrain an agency from using another system; they simply offer the agency the opportunity to share in the savings associated with volume bookings. As the Department noted in its 1992 Rulemaking Decision, “Productivity pricing differs from minimum use clauses because a subscriber’s failure to meet the minimum booking requirement does not constitute a breach of the agreement making the agency liable for substantial damages.”³⁷ Further, the Department also recognized in 1992, and it remains true today, that productivity pricing promotes the efficient use of equipment and that its advantages outweigh any unproven claims that such pricing deters agencies from enjoying the benefits of CRS competition.

It is noteworthy in this regard that travel agency interests have not taken the initiative to complain to the Department about productivity pricing in their prior or supplemental filings in this proceeding. In fact, in its February 1998 reply comments in this proceeding, an entity representing several of the largest U.S. travel agencies expressly opposed proposals to eliminate productivity pricing.³⁸

E. The Department Should Take Steps Proposed by Amadeus and Other Commenters to Enhance CRS Competition

While CRSs aggressively compete with one another for travel agency business, Sabre has been able through a variety of means to maintain its significant market share (over 36% in terms of U.S. travel agency locations) in the United States.³⁹ The Department has an

³⁷ 57 Fed. Reg. at 43826.

³⁸ See Reply Comments of Large-Agency CRS Coalition at 5.

³⁹ See *Travel Distribution Report*, January 13, 2000 at 1, 4-7 (noting that “Sabre’s stronghold is in the United States -- and it is growing.”)

opportunity in this proceeding to enhance competition to the benefit of airlines, agencies and consumers. It should do so by taking the following steps:

First, the Department should prevent tying by airlines of special fares or commissions to use of a favored CRS, as Amadeus has consistently requested in this proceeding and in Docket OST-99-5888. Several parties have, in this most recent round of comments, expressed support for that position. *See* Balboa Comments at 1 (describing how that agency lost business due to pressure from a corporate account that was told it would lose its discounts unless a different CRS were used); Continental Comments at 17 (“the Department should investigate and take action against the long-ignored anti-competitive practice of tying of airline discount fares and other incentives (override commissions waiver of fare rules, free tickets, priority wait lists and similar favors) to use of a particular CRS system”); Galileo Comments at 11-12 & n.11 (offering examples of how airlines use their dominant position to force agencies to use a favored CRS).⁴⁰

Second, the Department should reduce the maximum term of subscriber contracts from five years to three years, with a stipulation (similar to that found in the current version of section 255.8(a)) that a CRS must offer one year term contracts if it also offers contracts that are up to three years in length. Shortening maximum contract terms will bring more agencies into competitive play for CRS services more frequently and will give CRSs with a smaller market

⁴⁰ As Amadeus has previously explained, this problem is not limited to the corporate discount setting and impacts competition for travel agencies generally. The Department should prohibit this tying practice generally, however, regardless of the nature of the fare being tied. Further, as Amadeus has previously argued to the Department, the Department should either broadly interpret the “commonly available” language in section 255.7 or eliminate those terms altogether to make clear that they do not become a loophole that swallows the mandatory participation rule.

share an increased opportunity to vie for agency business. This is consistent with the Department's policy of enhancing competition in this area.

Third, as advocated by several parties, the Department should prohibit CRSs from imposing substantial monetary penalties for the cancellation of CRS contracts. It is reported that Sabre applies significant damage penalties to prevent agencies from switching services.⁴¹ The EU Rules offer a good model for how this situation can be remedied: Article 9, paragraph 4(a) provides, as relevant, that a "subscriber may terminate its contracts with a system vendor by giving notice which need not exceed three months, to expire not before the end of the first year. In such case, a system vendor shall not be entitled to recover more than the costs directly related to the termination of the contract."

Fourth, the Department should next review its CRS Rules in three years, not five, to determine whether these and other proposed reforms are working. It has now been eight years since the last review was undertaken and that is plainly too long a time to assess the operation of these Rules given the fast pace of technological and competitive changes in airline distribution practices.

Finally, Amadeus agrees with the proposal of Continental Airlines that the Department enhance its enforcement efforts relative to its CRS Rules. The Department should devote the resources needed to address these and other issues that arise under the Rules.

⁴¹ See June 17, 1998 Complaint filed in *Lyn-Lea Travel Corp. d/b/a First Class International Travel Management v. American Airlines and The Sabre Group*, Docket OST-98-3963.

F. The Department Should Not Require the Separate Sale of Internet Distribution Services Provided by CRSs

The Department should reject Delta's proposal that each CRS be required to contract separately with participating airlines for its Internet distribution services.⁴² Amadeus, like Sabre and Travelocity, strongly objects to Delta's proposal. Amadeus is a single distribution system and all of its distribution channels (whether traditional or Internet-based) are embraced within that system. When a participating airline signs a contract with Amadeus, Amadeus agrees to distribute the airline's services through all means used by Amadeus, and does not distinguish between different distribution modes. In other words, there is no tying because distribution via "traditional" and via on-line travel agents or other means are not distinct products.

Further, CRSs have an obligation to make airline flight information available to *all* of their subscribers, not just "bricks and mortar" agencies. The Department would unfairly favor non-CRS-driven Internet travel sites (such as Orbitz) by imposing a requirement that CRSs divide their traditional and Internet distribution services for contractual purposes. The Department should leave this decision to the market, as it has already opted to do, since encouraging consumers to use non-neutral web sites could harm airline competition, and ultimately consumers. Finally, Delta and other airlines have argued in the past that they should be permitted to opt out of on-line distribution because of the risks associated with such distribution. This argument, which already seems antiquated in light of rapid developments in e-commerce, clearly is no longer viable since most airlines have fully embraced on-line distribution, as Orbitz exemplifies.

⁴² See Delta Supplemental Comments at 28-31. AAPA (at 2-3), American (at 22); Continental (at 16-17); Midwest Express (at 23-27) and Northwest (at 7) supported Delta's proposed rule. Sabre (at 25-27) and Travelocity (at 23-24) oppose Delta's proposal.

G. The Department Should Retain the Prohibition on Using CRS-Supplied Hardware to Access Competing Systems

The Department should not require CRSs to allow agents to access other systems through CRS-owned hardware, as Delta and Orbitz suggested.⁴³ The Department decided in its 1992 rulemaking that such a requirement would be unfair to CRSs.⁴⁴ Nothing has changed to alter that conclusion, and neither Delta nor Orbitz offers any argument to the contrary. Indeed, Orbitz offers no justification whatsoever for such a rule, while Delta merely states that competition would be enhanced if agents could access all systems through system-owned terminals.

As the Department has pointed out, CRSs are entitled to compensation for the use of their property and assume a certain level of bookings by an agency in setting subscriber fees.⁴⁵ Forcing a CRS to allow agencies to access competing systems through its hardware would obviously interfere with that CRS's ability to be appropriately compensated for the use of its property. Moreover, such a requirement would disrupt the CRS's investment-backed expectations and distort its incentives to make the required investment in its equipment. In this regard, Delta's view that such a requirement would promote competition is far too short-sighted. While the local hamburger joint would certainly benefit from using a McDonalds storefront (thus promoting competition in the short term), why would McDonalds continue investing its money in the long run to build restaurants that largely benefit its competitors? Further, since agencies

⁴³ See Delta Supplemental Comments at 8-9; Orbitz Comments at 78.

⁴⁴ See 57 Fed. Reg. at 43800.

⁴⁵ *Id.*

can already access all systems through third-party hardware, there is no reason to force CRSs to allow their equipment to be used for that purpose.⁴⁶

H. The Department Should Retain the Current Rules Concerning Non-Discriminatory Access to Booking and Marketing Data

Travel agency interests and smaller carriers claim that larger carriers use data purchased from CRSs to reduce competition or to punish specific agencies by adjusting commissions or by other means. Based on these allegations, they argue that the availability of this data should be restricted or that the data of a carrier should not be made available to another carrier without the permission of the first carrier.

The restriction of data that airlines find useful for making marketing decisions is not the answer to these concerns. Markets work best when more, not less, information is available. If, however, data is being abused by airlines to retain or enhance competitive advantage -- an allegation that seems to be based more on speculation than factual footing in this record -- the Department might consider appropriate restrictions on the use of the data. The Department has ample authority under Section 411 to address unfair, deceptive and anti-competitive practices that parties may bring to its attention on a case-by-case basis. Making the data unavailable (including to system-owners) by a broad-brush rule, however, is not the answer.

The Department should also consider that the EU Code of Conduct for CRSs allows access, on a non-discriminatory basis, to booking and marketing data. *See* EU Code, Article 6. It would be both anomalous and contrary to a sensible harmonization of U.S. and EU rules for the Department to deny carrier access to such data, while the EU Code allows such access.

⁴⁶ *See* 14 C.F.R. § 255.9.

CONCLUSION

For all of the reasons stated here and in its prior comments in this proceeding and in Docket 99-5888, the Department should propose and adopt revised CRS rules consistent with the views stated here.

Respectfully submitted,



Of Counsel:

Tomas Lopez Fernebrand
Vice President and General
Counsel
Salvador de Madariaga, 1
28027 Madrid
Spain

David H. Coburn
Carol R. Gosain
STEPTOE & JOHNSON LLP
1330 Connecticut Avenue, N.W.
Washington, D.C. 20036
(202) 429-8063

Attorneys for Amadeus Global Travel
Distribution, S.A.

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EXHIBIT 1

GetThere.com plans direct links

GetThere.com unveiled plans to connect airlines, hotels and rental car companies directly to corporate accounts, beginning this summer.

More than a dozen major travel suppliers have enrolled in the new "GetThere Supplier Network," which the Menlo Park, Calif.-based company said will reduce their distribution costs while delivering faster booking, enhanced purchasing services and cost savings to corporate users.

GetThere.com isn't first out of the gate with the direct-connect model. Oracle subsidiary E-Travel, in Waltham, Mass., has its own eTLink program, with Delta and Continental, among others.

The suppliers that have joined the GetThere.com Supplier Network include Accor Hotels, Avis, British Airways, Budget Rent a Car, Candlewood Hotels, Hertz, Marriott International, Micros Fidelio and Hotel Bank, Northwest Airlines, Radisson Hotels and Resorts, Starwood Hotels and Resorts, TWA and United Airlines.

Corporate travelers most likely will need to book suppliers outside the GetThere Supplier Network.

A new "GetThere SuperPNR" will integrate bookings from different sources, GetThere.com said, so air reservations could be made directly and combined with rental car and hotel bookings made through a GDS.

The SuperPNR is already working on the America West Web site, enabling visitors to book flights directly from the airline and then add hotel and car bookings.

GetThere.com connects to all the major GDSs and its direct-connect plans don't mean the company is giving up on them.

"We see this as an integrated booking approach that includes GDS and direct-connect bookings.

"It may cut out some of the GDS bookings, but we plan to continue strong relationships with the GDSs," the company said.

The direct connections, which will leverage open standards technology, such as extensible markup language, will be phased in starting in late summer, GetThere.com said.

Direct connections will enhance booking performance, cutting air-booking time nearly in half, the company said.

"This is a product of using new, more sophisticated Internet technology to do the searching rather than old legacy computer systems," it said.

The participating suppliers will be able to deliver rich content to the end user that they cannot provide in the GDSs' text-based format, GetThere.com noted. Hotels could show room photos and floor plans, for example, while rental car companies could provide photos of car choices. Airlines could improve the seat selection process.

Direct connections also will enable suppliers to develop specialty loyalty programs targeted directly to the corporate traveler, the company said.

Participating suppliers will save on GDS fees and presumably share their savings with the corporate customer.

"We would charge a much lower fee than the GDS to suppliers," the company said. "But it will vary, so [we] can't be specific."

The direct-connect market model holds other possibilities, GetThere.com said, such as direct billing and settlement, and special pricing and inventory distribution.

Additionally, WizCom International announced plans to participate in the GetThere Marketplace by building an interface that links WizCom's 90 customers directly to buyers through the GetThere service.

The agreement will give GetThere.com customers access to up to 90 hotel chains through WizCom's direct connectivity to central reservations systems, WizCom said. ■



Sabre buys GetThere to merge with BTS

Sabre made a cash tender offer to acquire GetThere for \$757 million, agreeing to buy all the Menlo Park, Calif.-based company's common shares for \$17.75 each, about 46 percent above the stock's closing price the day before the deal was announced.

Sabre's own Business Travel Solutions unit will merge with GetThere and adopt its name.

Currently the two entities combined have about 600 employees.

Gadi Maier, GetThere's chairman, president and chief executive officer, will lead the "new" GetThere.

Scott Smith, senior vice president and general manager of Sabre BTS will continue to play a major role.

Sabre hopes to close the deal in the fourth quarter of this year, subject to regulatory and customary closing procedures.

William Hannigan, Sabre's president, chairman and chief executive officer, told financial analysts he expects no problems getting the deal cleared by the Justice Department and the Securities and Exchange Commission.

On-line corporate bookings account for only about 1 percent of the travel market, and competitors of Sabre and GetThere already include the likes of Oracle and Microsoft, he explained.

But with the merger of two archrivals in the corporate on-line booking market, "There will no longer be an argument about who is the leader in the online corporate channel," Hannigan said.

GetThere will give Sabre a multi-GDS platform as well as a supplier direct-connections program that ultimately will evolve into what could be described as an alternate GDS.

GetThere is building its direct links for its "GetThere Supplier Network," a program with more than a dozen suppliers already signed on, including such firms as British Air-

ways, Hertz, Marriott International and United Airlines.

What GetThere is working toward is an open architecture system in which suppliers and, in certain situations, GDSs, will provide access to inventory via a middleware system.

Customers will access the middleware with various booking engines.

The middleware will house new faring technology that GetThere brought under its own roof by acquiring Automated Travel Systems.

Sabre's Scott Smith said that given enough time and money, Sabre could have developed GetThere-like products on its own, but this way it gets new technologies faster and more efficiently.

Sabre and GetThere plan to integrate their booking systems and ultimately end up with one product that offers the best features of each, including GetThere's interface with all the major GDSs, Smith said.

That GDS "independence" will remain "a key strategy," Maier said.

Maier said about half of GetThere's bookings go through Sabre rival Galileo International, about 25 percent to 30 percent go through Sabre and the remainder goes through the other GDSs.

Smith said the GetThere/BTS combo will be "fairly independent from Sabre," with no "built-in biases" favoring a particular GDS.

"We want to maximize revenues and operating earnings. If it's good for the customer base, it's good for the new [entity], regardless of whether it generates more booking fees for Sabre," he explained.

Hannigan made the same point in a teleconference call with financial analysts, saying the deal "is not about booking fees." ■

EXHIBIT 2

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Northwest Withdraws From LowestFare.Com In Display Bias Dispute

Northwest has told LowestFare.com it can no longer sell Northwest tickets through Sabre because of a dispute over preferred display of selected carriers. In a memo to LowestFare.com Monday, Northwest said it would no longer allow the site to display Northwest fares until display bias problems were resolved. Northwest first notified LowestFare.com of the bias display issues in August and gave it until Sept. 6 to fix the problem but later extended the deadline.

Northwest VP-Distribution Planning Al Lenza told The DAILY that Northwest has been conducting audits of all Internet sites over the last four months. Northwest already complained of display bias to Travelocity.com (DAILY, July 31), but Lenza said most problems there appear to be caused by system deficiencies rather than bias. He said Northwest continues to have an issue with Travelocity.com (Continued) over displaying preferred carriers that have agreements with the company. When a customer asks for additional flights, Lenza said, those carriers continue to appear. "We're still working with them, but we're making progress," Lenza said. "The LowestFare.com issue is the worst because it's clear they have special agreements" with carriers like America West and TWA, "even when we have the lowest fare." Lenza said Northwest asked LowestFare.com to fix the problem or disclose to the consumer that they were not getting the lowest price, "but they claimed they couldn't do that." Lenza said Northwest's inventory is being used to provide LowestFare.com credibility by allowing it to claim they sell tickets on all carriers, "but behind the scenes we get sacrificed in display logic and don't have a chance to compete." Northwest, meanwhile, is paying CRS fees, booking fees and a commission. "After almost three months of going back and forth, we decided we're better off not being sold on their site," Lenza said.

LowestFare.com CEO Ken Swanton denied the site biases displays in any way "other than offering the lowest available fare." He said the results Northwest "takes exception to are instances where they do not appear at the top of the displays." Swanton told The DAILY that LowestFare sorts information by price, time, if the consumer wants it, and availability. "Any discrepancy in the order that Northwest appears is as a result of how the available flights and the appropriate fares are presented to us by Sabre. Furthermore, we also give the consumer the option of asking for nonstop or connecting flights.... There is emphatically no bias in our displays," he said.

EXHIBIT 3

BUSINESS

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Deals
Stocks

TUESDAY, OCTOBER 17, 2000

DM VA 5

Computers in Half of U.S. Homes

By MARTIN CRUTSINGER
Associated Press

More than half of American households now have computers, the government said yesterday.

The share of households with computers rose from 42.1 percent in December 1998 to 51 percent in August of this year—a total of 53.7 million households, the Commerce Department found in its latest survey of computer usage.

In a separate survey, Nielsen/NetRatings reported yesterday that Washington is the most wired city on the East Coast when it comes to Internet use at home. About 59 percent of Washingtonians have access to the Internet at home, making Washington No. 5 in Internet household penetration among the nation's local markets, the report said.

Washington lags behind San Francisco's 66 percent home penetration, Seattle's 64 percent, San Diego's 62 percent and Portland's 60 percent. Previous surveys have found the Washington area on top when Internet use in the office is included in the measurement.

The Commerce Department

found that the percentage of U.S. households with Internet access was 41.5 percent in August, up from 26.2 percent a year earlier.

But, as in past surveys, the government found a "digital divide," with whites and people living in cities much more likely to have computers and Internet access than minorities and those living in rural areas.

The report found that 23.5 percent of black households had Internet access in August. While this was up from 11.2 percent in the 1999 survey, it still trailed the rate for white households, 46.1 percent.

The percentage of Hispanic households with Internet access was 23.6 percent in August. Asian Americans and Pacific Islanders continued to have the largest Internet penetration at 56.8 percent.

The report, "Falling through the Net: Toward Digital Inclusion," was released by Commerce Secretary Norman Y. Mineta as he began a West Coast tour aimed at highlighting efforts to close the gap in computer and Internet use.

"Each year being connected becomes more critical to economic and educational advancement and to

community participation," Mineta said. "That's why it is so important that we move as quickly as we can toward digital inclusion."

The Commerce Department report showed that computer ownership has been rising steadily, going from 8.2 percent of households in 1984 to the current 51 percent. Internet access in homes has risen from 18.6 percent in 1998 to 26.2 percent in 1999 and 41.5 percent in the August survey.

Among the report's other findings:

- The disparity between men and women in their use of the Internet has largely disappeared, with 44.6 percent of men and 44.2 percent of women now on the Web.

- Sending messages remains the most popular use for the Internet, with 79.9 percent of Internet users reporting that they use e-mail. Online shopping and bill paying showed the fastest growth.

- By state, Utah ranked No. 1 in computer ownership, with 66.1 percent of households having a PC, followed by Alaska at 64.8 percent. Lowest were Mississippi, at 37.2 percent, and Arkansas, at 37.3 percent.

CERTIFICATE OF SERVICE

I hereby certify that I have this 23rd day of October, 2000 served a copy of the foregoing Reply Comments of Amadeus Global Travel Distribution, S.A. in Response to July 24, 2000 Notice on all of the parties of record in Docket OST-2881.

A handwritten signature in black ink, appearing to read 'David H. Coburn', with a long horizontal flourish extending to the right.

David H. Coburn